

## **Assembly Bill No. 2010**

### **CHAPTER 808**

An act to amend Section 23104.2 of, and to repeal and add Section 23389 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2014. Filed with  
Secretary of State September 29, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2010, Gray. Alcoholic beverages: beer returns: product quality: beer manufacturers: duplicate licenses.

Existing law, the Alcoholic Beverage Control Act, generally permits a wholesaler or manufacturer to accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. Existing law permits a credit memorandum to be issued when a package is broken or damaged when the return and corrections are completed within 15 days, as specified. Existing law provides exceptions from this limitation, including permitting the return of beer by a retailer to a seller, and by a seller to a manufacturer or importer, if the beer is recalled or presents a health or safety issue, as provided.

This bill would extend the exception provided for beer that is recalled or presents a health and safety issue, as described above, to beer that has product quality issues, subject to Department of Alcoholic Beverage Control approval.

The Alcoholic Beverage Control Act is administered by the Department of Alcoholic Beverage Control. Existing law requires a license or permit to manufacture beer, unless the beer is manufactured for personal or family use, under specified conditions. A licensed beer manufacturer may sell beer to consumers at a branch location. Existing law requires the department to issue a duplicate license to a beer manufacturer if the beer manufacturer applies for a duplicate license. Under existing law, for 30 days from the date of the issuance of a duplicate license, retail sales of beer are prohibited at a branch office for which the duplicate license was issued. The act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would, instead, allow the department to issue a duplicate license at its discretion where specified privileges are to be exercised at the branch office. The bill would prohibit the sale or tasting of alcoholic beverages to consumers at more than 6 branch office locations, and allow 2 of the branch office locations to be bona fide eating places owned and operated by and for the beer manufacturer, as provided. The bill would require the department to issue a beer manufacturer temporary permit upon request and payment

of a \$100 fee and would also authorize the department to issue a duplicate license when specified privileges are not going to be exercised at a branch office. The bill would eliminate the 30-day prohibition on retail sales of beer for a branch office with a duplicate license. Because the violation of a provision of a license is punishable as a misdemeanor, the bill expands the definition of an existing crime, thereby creating a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 23104.2 of the Business and Professions Code is amended to read:

23104.2. (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail licensee or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or

entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis unless the licensee notifies that wholesaler or manufacturer, or successor thereto, within 15 days of the date the licensee's operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, "seasonal brand of beer" means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

(c) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license.

(d) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (c) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

(e) (1) Notwithstanding the 15-day time limit for the return of beer described in subdivision (a), beer that is recalled or that is considered by a manufacturer, importer, or governmental entity to present health, safety, or product quality issues if distributed, offered for sale, or sold in the state may be accepted for return at anytime from a retailer and be picked up by the seller of beer. The seller of beer may exchange the returned beer for identical product, if safe inventory or quality-controlled product inventory is available, issue a deferred exchange memorandum showing the beer was picked up and is to be replaced when inventory is available, or issue a credit memorandum to the retailer for the returned beer. The seller of beer may exchange with the manufacturer or importer the returned beer and the seller of beer's inventory that was recalled or considered to present health, safety, or product quality issues. The returned beer may be exchanged for identical product, if safe inventory or quality-controlled product inventory is available, or the seller of beer may elect to receive either a refund from or be issued

a credit memorandum by the manufacturer or importer for the returned beer and seller of beer's inventory that was recalled or considered to present health, safety, or product quality issues.

(2) Returns for manufacturer or importer product quality issues pursuant to this subdivision are subject to department approval, and shall not include the return of beer due to the aging of beer.

(f) Notwithstanding subdivision (a), a licensee may accept the return of unsold and unopened beer from an organization that obtained a temporary license pursuant to Section 24045 or 24045.1. The licensee may credit the account of the organization in an amount not to exceed the original sales price of the returned beer, provided that the beer has been paid for in full.

(g) (1) Notwithstanding subdivision (a), an on-sale retail licensee that purchases beer for sale at an event for which a catering authorization is issued by the department pursuant to Section 23399 may return the unused and unopened beer to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization, provided the beer was purchased for use or sale only at that event and the on-sale retail licensee does not also provide any beer for use or sale at the event from its permanent licensed premises. The on-sale retail licensee holding the catering authorization shall record and maintain a record of the inventory of all unused and unopened beer to be returned at the conclusion of the catering event. The original selling licensee shall prepare an invoice to reflect the returned beer that shall reference the original sales invoice and shall provide the on-sale retail licensee holding the catering authorization with a copy of the invoice.

(2) Any beer returned pursuant to this subdivision must be returned to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization. The original selling licensee may credit the account of the on-sale retail licensee in an amount not to exceed the original sales price of the returned beer, provided the beer has been paid for in full.

SEC. 2. Section 23389 of the Business and Professions Code is repealed.

SEC. 3. Section 23389 is added to the Business and Professions Code, to read:

23389. (a) The department may issue to a beer manufacturer a duplicate of its original license for a location or locations other than its licensed premises of production or manufacture. A duplicate license issued by the department authorizes the maintenance and operation of each branch office by the beer manufacturer and shall only have the license privileges set forth in this section. The fee for each duplicate license, regardless of type, shall be as specified in Section 23320.

(b) Subject to the limitations set forth in this section, a licensed beer manufacturer may exercise all of the privileges under its manufacturer's license at branch offices licensed by the department, except for production or manufacture; sales to consumers for consumption on or off the branch office premises, except as provided for in subdivision (c); and the sale of beer and wine to consumers for consumption on the branch office premises

where a bona fide public eating place is owned and operated by and for the beer manufacturer, except as provided for in subdivision (c).

(c) (1) A beer manufacturer shall not sell any alcoholic beverages to consumers for consumption on or off the licensed premises, or provide authorized tastings to consumers, at more than six branch office locations, regardless of how many beer manufacturer licenses are held by the beer manufacturer either alone or under common ownership with any other licensed beer manufacturer, and no more than two of the six branch locations may be bona fide public eating places owned and operated by and for the beer manufacturer. A branch office location authorized to sell an alcoholic beverage or provide a tasting to consumers for consumption on or off the licensed premises or that is a bona fide public eating place owned and operated by and for the beer manufacturer before the effective date of the act adding this section, shall be counted against the limit imposed by this subdivision.

(2) A branch office location where consumer tastings or sales for on- or off- premises consumption are authorized shall not sell or serve any alcoholic beverages other than beer that is produced and bottled by, or produced and packaged for, the beer manufacturer.

(3) A branch office location where the sale of beer and wine to consumers for consumption on the premises of a bona fide public eating place is authorized shall not sell or serve alcoholic beverages other than the following:

(A) Beer and wine that is produced and bottled by, or produced and packaged for, the beer manufacturer.

(B) Beer and wine that is purchased by the beer manufacturer from a licensed wholesaler that is not owned, either alone or under common ownership, by the beer manufacturer.

(d) In order to obtain a duplicate license for a branch location or locations with the privileges described in subdivision (c), a beer manufacturer shall submit any application forms as the department may require. Upon request, and upon payment by the beer manufacturer of a fee of one hundred dollars (\$100), the department shall issue to a beer manufacturer a beer manufacturer temporary permit for use at a branch office location during the period the application for a duplicate license with privileges pursuant to subdivision (c) is pending. The beer manufacturer temporary permit shall authorize the beer manufacturer to exercise all of the privileges under the duplicate license except for those privileges described in subdivision (c).

(e) A beer manufacturer temporary permit shall be effective for a period of 120 days and may be extended at the discretion of the department for additional 120-day periods as necessary and upon payment of an additional fee of one hundred dollars (\$100).

(f) In order to obtain a duplicate license for a branch office location or locations without the privileges described in subdivision (c), a beer manufacturer shall submit all application forms as the department may require, and the department shall issue that duplicate license forthwith; provided, however, that any duplicate license issued forthwith by the

department shall be contingent on the beer manufacturer consenting to the imposition of a condition that the beer manufacturer shall make no changes in the character or mode of operation of the branch office premises that would directly or indirectly expand the privileges under the duplicate license, such as to include those privileges described in subdivision (c), without notice to and approval by the department. If the department receives any protest concerning the issuance of the duplicate license forthwith under this subdivision, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed. Any proposed changes in the character or mode of operation of the branch office premises that would directly or indirectly expand the privileges under the duplicate license, such as to include those privileges described in subdivision (c), shall require reapplication and reissuance of the duplicate license pursuant to subdivision (d).

(g) Notwithstanding the provisions of any other section of this division, a beer manufacturer may continue to exercise privileges at all of its licensed branch offices that were in existence and authorized by the department prior to the effective date of the act adding this section, including any privileges resulting from any renewal or transfer of the duplicate licenses for the branch locations, that it was authorized to exercise prior to that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to bolster California's economy and to aid struggling businesses in this economically stagnant time, it is necessary for this act to take effect immediately.